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In the Supreme Court of the United States

OCTOBER TERM, 1967

NO. 9, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

BRIEF FOR THE UNITED STATES IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF AND SUPPLEMENTAL DECREE AS TO THE STATE OF TEXAS

PRIOR OPINIONS

This Court's opinions in earlier phases of this original action are reported at 363 U.S. 1 and 121 (the latter *sub nom. United States* v. *Florida*), and its decrees at 364 U.S. 502 and 382 U.S. 288. Prior orders of the Court in the present phase of the proceeding (App. C, *infra*, pp. 55, 61) are reported at 386 U.S. 979 and 1016.

JURISDICTION

The jurisdiction of this Court over this original suit by the United States against five States of the Union is conferred by Article III, Section 2, Clauses 1 and 2, of the Constitution of the United States, and 28

U.S.C. 1251(b)(2). On December 12, 1960, the Court entered a decree defining the rights of the parties to the suit in general terms and retaining jurisdiction "to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree." 364 U.S. 502, 504. On December 13, 1965, the Court entered a supplemental decree as to the State of Louisiana, again retaining jurisdiction to entertain further proceedings to implement the decree of December 12, 1960. 382 U.S. 288, 295. The present proceeding to determine the precise application of the 1960 decree to certain areas off the coast of Texas—in which the Court entered orders on March 24 and April 24, 1967 (386 U.S. 979, 1016; App. C, *infra,* pp. 55, 61)—is within the jurisdiction retained by this Court in its previous decrees.

STATUTES INVOLVED

The pertinent provisions of the Submerged Lands Act, May 22, 1953, 67 Stat. 29, 43 U.S.C. 1301 *et seq.*, and of the Republic of Texas Boundary Act, December 19, 1836, 1 Laws of the Republic of Texas 133, are printed in App. A, *infra,* pp. 25–28.

QUESTION PRESENTED

Whether Texas' offshore submerged lands, which are delimited under the Submerged Lands Act by Texas' three-league boundary "as it existed" when Texas became a State in 1845, extend three leagues from artificial structures built after 1845.

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STATEMENT

1. In *United States* v. *Texas,* 339 U.S. 707, 340 U.S. 900, this Court, applying the teachings of *United States* v. *California,* 332 U.S. 19, held that:

> The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights in, and full dominion and power over, the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas, and outside of the inland waters, extending seaward to the outer edge of the continental shelf * * *. The State of Texas has no title thereto or property interest therein. [340 U.S. 900–901.]

Thereafter, by the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. 1301 *et seq.,* the United States granted the coastal States a portion of the submerged lands located beyond inland waters. The grant was limited to a distance of three geographical miles from the coast line, except in the Gulf of Mexico, where it might extend beyond the three-mile belt to the boundaries of each State, either as previously approved by Congress or "as they existed at the time such State became a member of the Union," not exceeding three leagues (nine geographical miles) from the coast line.[1] App. A, *infra,* pp. 25–27.

The original action of which the present controversy is a phase was begun by the United States in 1955 to

[1] "Coast line" was defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," App. A, *infra,* pp. 25–26.

quiet its title to submerged lands more than three miles from the coast.[2] On May 31, 1960, this Court held that the United States was entitled to the submerged lands more than three geographical miles from the coasts of Louisiana, Mississippi, and Alabama, but that the three-league boundaries claimed by Texas [3] and Florida were entitled to recognition under the Submerged Lands Act. *United States* v. *Louisiana,* 363 U.S. 1; *United States* v. *Florida,* 363 U.S. 121. Texas' boundary was sustained solely on the ground that it existed when the State became a member of the Union on December 29, 1845. 363 U.S. at 36–65.

The final decree, entered December 12, 1960, provided (364 U.S. 502–504) that

> the United States is entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico * * * more than three leagues seaward from the coast lines of Texas and Florida, and extending seaward to the edge of the Continental Shelf. * * * As used in this decree, the term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

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[2] Brought originally against Louisiana alone, the suit was amended in 1957 (pursuant to order of this Court, 354 U.S. 515) to join Texas, Mississippi, Alabama and Florida as additional defendants.

[3] The Republic of Texas Boundary Act (App. A, *infra,* p. 27) provided that "the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land * * *."

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The decree awarded to Texas and Florida the submerged lands and resources landward of those described in the portion of the decree quoted above (subject to exceptions not relevant here), and provided that "[w]henever the location of the coast line of any of the defendant States shall be agreed upon or determined" the State affected should account for its receipts since June 5, 1950, from the area awarded to the United States. The Court reserved jurisdiction "to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree." Such jurisdiction was again retained by a supplemental decree entered December 13, 1965, adjudicating title to certain specific offshore areas as between the United States and Louisiana. 382 U.S. 288, 295.

2. Sometime prior to November 1, 1966, the State of Texas announced its intention of offering for mineral leasing on that date certain submerged lands in the Gulf of Mexico, including some that were within three leagues of jetties at the entrance to Galveston harbor but more than three leagues from any part of the natural shore line. On October 25, 1966, the Solicitor General of the United States wrote to the Attorney General of Texas protesting that such lands were not within the boundary of Texas as it existed when Texas became a member of the Union—since at that time there was no recognized principle of measuring boundaries from jetties or other artificial works[4]—and

[4] Indeed, the earliest surveys of the coast of Texas by the United States Coast Survey (now the Coast and Geodetic Survey), made

hence those lands were not granted to Texas by the Submerged Lands Act. On November 18, 1966, J. Arthur Sandlin, Assistant Attorney General of Texas, replied that the lands in question had not been leased because no satisfactory bids had been received, but that Texas considered the Solicitor General's contention inconsistent with positions taken by the United States in other situations. The Solicitor General responded on December 7, 1966, repeating his former contention and distinguishing those situations. He expressed the hope that further discussions would enable the parties to reach an understanding on the subject.

On February 21, 1967, the Commissioner of the General Land Office of Texas issued a Notice for Bids

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at various times between 1850 and 1886, show that there were no artificial harbor works or other artificial structures of any kind on the Gulf coast of Texas at that time. Affidavit accompanying U.S. Motion for Injunctive Relief, etc., pp. 22–25 (App. C, *infra*, pp. 49–52). Today, however, there are jetties extending from the coast of Texas into the Gulf of Mexico, including jetties at the entrances to Galveston Harbor and Sabine Pass. The Galveston project was recommended to Congress in the Annual Report of the Chief of Engineers for 1874, H. Exec. Doc. No. 1, Pt. 2, vol. 2, pt. 1, 43d Cong., 2d Sess., pp. 722–740 (Cong. Doc. Ser. No. 1636), and construction began in September 1874, Annual Report of the Chief of Engineers for 1875, H. Exec. Doc. No. 1, Pt. 2, vol. 2, pt. 1, 44th Cong., 1st Sess., pp. 79, 846–869 (Cong. Doc. Ser. No. 1675). The Sabine Pass project was recommended to Congress by the Report of the Chief of Engineers of the Results of the Survey of the Entrance to the Sabine Pass, Texas, H. Exec. Doc. No. 147, 47th Cong., 1st Sess., Mar. 28, 1882 (Cong. Doc. Ser. No. 2030), and construction began in January 1883, Annual Report of the Chief of Engineers for 1883, H. Exec. Doc. No. 1, Pt. 2, vol. 2, pt. 1, 48th Cong., 1st Sess., pp. 199–201 (Cong. Doc. Ser. No. 2183); *id.*, pt. 2, pp. 1047–1055 (Cong. Doc. Ser. No. 2184).

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for the sale on April 4, 1967, of submerged lands of the Gulf of Mexico, including some within three leagues of the jetties at Sabine Pass and Galveston Harbor but more than three leagues from the natural coast line.[5] On February 28, 1967, the Commissioner wrote to the Director of the Bureau of Land Management, Department of the Interior, stating that in his view Texas was justified in measuring its three leagues from man-made structures, and announcing that lands within that distance would be offered for leasing on April 4, 1967. On March 24, 1967, the State declined to postpone its leasing of such lands. Affidavit accompanying U.S. Motion for Injunctive Relief, etc., pp. 19–25 (App. C, *infra*, pp. 46–52).

On March 24, 1967, the United States filed in this Court a Motion for Injunctive Relief and Supplemental Decree as to the State of Texas (App. C, *infra*, pp. 42–46), seeking a determination that under the decree of December 12, 1960, the State of Texas may not measure the three-league limit of its submerged lands from artificial structures on its coast. A temporary restraining order and preliminary injunction were requested. The Court entered a temporary restraining order on the same day, 386 U.S. 979

[5] Some of these tracts are listed in the Affidavit accompanying the U.S. Motion for Injunctive Relief, etc., at page 21 (App. C, *infra*, p. 48). Another such tract, inadvertently omitted from that enumeration, is the tract bearing marginal number 339 in the Commissioners' announcement and described as follows:

"339. Tract 182-L All the SE/4 & SW/4 northwest of the 3-Marine League Line 2330 ± Acres."

From an inspection of the official leasing map, it appears that approximately two-thirds of this tract is more than three leagues from the natural coast line.

(App. C, *infra*, p. 55). On April 12, 1967, Texas responded to the government's motion, asserting its right to the areas in question but undertaking not to offer them for leasing, pending determination of this controversy, without the approval of the United States and this Court. On the basis of that undertaking, the Court denied the request for a preliminary injunction on April 24, 1967. In the same order, the Court directed the filing of briefs on the government's motion. 386 U.S. 1016 (App. C, *infra*, p. 61).

ARGUMENT

INTRODUCTION AND SUMMARY

The Submerged Lands Act granted each coastal State the offshore submerged lands to a distance of three miles from the coast line. Beyond that, States located on the Gulf of Mexico were given all of the submerged lands (up to nine miles from the coast) within their boundaries in the Gulf "as they existed at the time such State became a member of the Union." In *United States* v. *Louisiana*, 363 U.S. 1, 64, this Court held that the State of Texas' boundary in the Gulf of Mexico was, as of the State's admission into the Union in 1845, "established at three leagues from its coast for domestic purposes," and accordingly that Texas was entitled to use that boundary to delimit the submerged lands granted to it under the Act.

While ruling that Texas was entitled to three leagues, and not merely three miles, of submerged lands, the Court did not attempt any precise delineation of the line from which the distance was to be

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measured. That line is described variously in the opinion and in the decree as the "coast" (363 U.S. at 64) or the "coast line" (364 U.S. at 503); and the decree incorporates the Act's definition of "coast line," *i.e.*, "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." 364 U.S. at 503; 43 U.S.C. 1301(c). But nowhere did the Court indicate whether the relevant coast line, for purposes of determining the precise extent of the submerged lands granted to Texas under the Act, is the line as of 1845; the natural coast line today, *i.e.*, excluding artificial jetties and harbor works, all of which were built after 1845; or the line today including such structures. The issue was not tendered to the Court. Indeed, when Louisiana raised a similar issue as to the proper base line from which its boundary (whether three miles or three leagues) should be measured, the Court stated (363 U.S. at 79; emphasis added):

> We think the consideration of this contention should be postponed to a later stage of this case. We decide now only that Louisiana is entitled to submerged-land rights to a distance no greater than three geographical miles from its coastlines, *wherever those lines may ultimately be shown to be.*

All the Court decided in its original opinions and decree was which States were entitled to historic claims beyond the three-mile limit and which were not. The issue in the present controversy—whether

Texas' three-league limit is to be measured from artificial extensions of the shore—remains open.

On this issue, we submit, first, that under a strict construction of the Submerged Lands Act Texas is entitled only to lands which were within the State's three-league boundary when it was admitted to the Union in 1845. This reading is supported by the Act's language and legislative history. Since there were no jetties or artificial harbor works on the Texas Gulf coast in 1845, a three-league boundary computed from those extensions would, contrary to the Act so construed, enlarge the State's dominion in the offshore lands beyond the area claimed by it upon admission to the Union.

The statutory reference to the State's boundary "as it existed" when the State entered the Union may be construed less strictly; but no permissible interpretation of that phrase can justify measurement from artificial structures subsequently built. An ambulatory line such as a water line or a boundary a stated distance from such a line has a continuing legal identity even though gradual, natural processes such as accretion or erosion may alter its location from time to time. In legal contemplation, it remains the same line, though in a different place. In this sense, the statutory reference to the State's boundary "as it existed" when the State entered the Union may be understood as referring to the boundary as then constituted, wherever it may be now or in the future as a result of its inherent mobility. But even under this liberal view, artificial structures built since Texas' admission to the Union cannot be considered part of the base

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line of the boundary "as it existed" in 1845. Under settled principles, artificial changes in the coast line do not change the location of the existing boundary. Texas' 1845 boundary did not expand with the subsequent construction of jetties and harbor works.

Texas can derive no comfort, in this connection, from the current practice of measuring maritime boundaries from artificial coastal structures. This principle relates only to the establishment of new boundaries; it does not prescribe a new location for existing boundaries. Thus, even if the modern rule had been in effect in Texas in 1845, a boundary measured from structures subsequently built would still be a *new* boundary. Whatever effectiveness it might have for other purposes, it would not be the boundary as it existed in 1845, which Congress has made the measure of Texas' rights under the Submerged Lands Act. Furthermore, the principle is of twentieth-century origin, and a boundary derived from its application would therefore not be the boundary "as it existed" in 1845, long before the principle was recognized.

The Submerged Lands Act, we emphasize, entitled Texas to the submerged lands that are either (a) within three miles of the modern coast line, or (b), to a limit of nine miles, within the boundary of Texas as it existed when Texas became a member of the Union. What Texas is attempting to do is to combine the most favorable elements of both provisions by measuring its historic three-league width from the modern coast which, because of jetties, extends seaward a mile or more beyond the original coast line. Nothing in the Submerged Lands Act justifies this

hybrid claim which would extend beyond both the historic boundary of Texas and the three-mile belt measured from the modern coast line. On the contrary, the Act makes it very clear that the historic claim must stand on its own feet, as it existed when the State became a member of the Union.[6]

I. READ STRICTLY, THE SUBMERGED LANDS ACT ENTITLES TEXAS ONLY TO THE SUBMERGED LANDS THAT WERE WITHIN THREE LEAGUES OF ITS COAST IN 1845, AT WHICH TIME THERE WERE NO ARTIFICIAL STRUCTURES IN EXISTENCE

In granting to the States the submerged lands off their coasts to a distance of three miles from shore, Congress in the Submerged Lands Act made special provision for those States, located on the Gulf of Mexico, that had historic boundaries of more than three miles. It gave them the submerged lands within their boundaries "as they existed at the time such State became a member of the Union." On its face, this provision seems to grant Texas only the submerged lands enclosed by its three-league boundary in 1845—the area within three leagues of its then coast—not additional lands the claim to which depends on later changes in the coast line. As this Court noted in its first opinion in this case, "the measure of the grant in excess of three miles is made to depend entirely upon the location of a State's original or later congressionally approved maritime boundary." 363 U.S. at 13.

[6] The supplemental point raised at pages 15–17 of the memorandum in support of our motion is not now being urged, as further study leads us to doubt its applicability in the present case.

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We find affirmative support for this construction in the legislative history. See Hearings in Executive Sessions of the Senate Committee on Interior and Insular Affairs on S.J. Res. 13, 83d Cong., 1st Sess., pp. 1353–1358, 1374. Senator Long offered an amendment that would have revised the second sentence of Section 4 of the Submerged Lands Act to begin as follows:

> Any State which has not already done so may extend its seaward boundaries to a line 3 geographical miles distant from its coastline existing at the time each such State became a member of the Union or where said coastline has been or is hereafter altered by natural accretions, then from such present or future coastline * * *. [*Id.*, p. 1353.]

Senator Cordon, presiding over the committee hearing, opposed the proposal on the ground that to permit a State to establish a new boundary three miles from the original location of its coast line would be contrary to the philosophy of the bill and would create new and difficult problems in identifying ancient coast-line locations. He pointed out that the bill gave a State two options: "It may rest upon its original line if it so desires, or under the authority on page 10 in section 4, it may extend its line under the authority of that section to a point 3 miles from its coastline as of now." *Id.*, p. 1355. When Senator Long suggested that this would lead to conflicting concepts of law, "One, that the coastline is measured from the point where you came into the Union; and the other, that it is measured from the point where it is

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now," Senator Cordon replied, "It measures from one point if the State of Louisiana desires to rest on it. It is measured from another for the purpose of electing, or failing to elect, option for extension from an existing coastline." *Id.*, p. 1357. Senator Long withdrew his proposal. *Id.*, p. 1374.

This exchange suggests that the historic boundary was to be measured from the historic coast line (while the alternative three-mile boundary was to be measured from the existing coast line), which was conceived as having a permanently fixed location unaffected by subsequent accretion, erosion or other changes in the configuration of the coast line. Senator Long's proposal was to permit measurement of the three-mile boundary, at the State's option, either from the original line, unaffected by erosion,[7] or from the current line, including accretion; both Senators assumed that historic boundaries (*e.g.*, Texas' three-league boundary) would be measured from the original line.

In arguing that the Submerged Lands Act gave Texas the exact submerged area that was within its boundary in 1845, and no more—the area within three leagues of the then, not the present, coast line, in other words—we do no violence to the principle that boundaries move with the gradual and natural shift in the

[7] "* * * [W]e do feel that where there has been a recession of the shoreline, the theory of the bill being that the States own within 3 miles of their historic boundaries, the historic boundary was the boundary at the time they came into the Union." *Id.*, p. 1357.

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coast line caused by accretion and erosion.[8] If, upon admission to the Union in 1845, Texas had owned the submerged lands within three leagues of its coast line, and due to accretion that line has changed in the intervening years, we would concede that its title today extended to three leagues from the present coast line. But, as this Court held in *United States* v. *Texas*, 339 U.S. 707, 340 U.S. 900, Texas had no rights in the submerged lands in 1845. Its rights flow exclusively from the Submerged Lands Act, which, we have argued, may be read as intended only to give Texas (and the other Gulf States which qualified) the submerged lands that at the time of its admission into the Union actually lay within its boundaries. Accretion and erosion appear to have little practical significance here,[9] but in principle we think it arguable that Texas is not entitled to determine the area of its grant by reference to the current coast line. Congress, we stress, was not required to grant Texas any part of the submerged lands between low tide and three leagues; there can be no quarrel, therefore, with its decision to grant only those lands that lay within Texas' boundary when the State was admitted to the Union.

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[8] See *New Orleans* v. *United States*, 10 Pet. 662, 717; *Jones* v. *Johnston*, 18 How. 150, 155; *Banks* v. *Ogden*, 2 Wall. 57, 67; *County of St. Clair* v. *Lovingston*, 23 Wall. 46, 66–69; *Jefferis* v. *East Omaha Land Co.*, 134 U.S. 178, 189–193.

[9] To the best of our knowledge, the changes in the coast line since 1845 due to accretion or erosion have not been great, but the precise location of Texas' Gulf coast line as of 1845 would be difficult to determine, since parts of the coast were not charted by the United States Coast Survey until 1886. See Affidavit accompanying U.S. Motion for Injunctive Relief, etc., p. 24 (App. C, *infra*, pp. 49–51).

II. VIEWING THE SUBMERGED LANDS ACT, ALTERNATIVELY, AS GIVING TEXAS ALL OF THE OFFSHORE LANDS TO THE PRESENT LOCATION OF THE 1845 BOUNDARY, TEXAS IS NEVERTHELESS NOT ENTITLED TO USE JETTIES AND ARTIFICIAL HARBOR WORKS AS PART OF THE BASE LINE

The reading of the Submerged Lands Act just suggested is not the only permissible one. The purpose of Congress in granting the Gulf States the submerged lands within their boundaries "as they existed" when the State was admitted into the Union may well have been to give each such State, not the particular area that it claimed at the time, but the area it would today enjoy if its historic boundary had been effective against the claims of the United States, held to be paramount in *United States* v. *Texas, supra.* There is support for this view in the Court's first opinion in the present case. See 363 U.S. at 26–28.

Even if valid, however, this construction does not avail Texas here. It would entitle the State to measure its three-league boundary from its present natural coast line and hence to take advantage of any accretion, since, as mentioned, boundaries move with such natural changes in the configuration of the coast without losing their legal identity. The location of the boundary changes, but it is the same, not a new, boundary. The alternative construction would not, however, entitle the State to measure the distance from the jetties and artificial harbor works that extend from its coast today. The works in question were all constructed after Texas' admission to the Union, and under established principles a boundary does not shift with changes in the coast line occasioned by artificial construction

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rather than gradual natural change. To be sure, under current principles a nation in establishing a new maritime boundary may use artificial extensions of the coast line as part of its base line. But this is not a principle which affects the location of existing boundaries. And it is unavailable to Texas here in any event since it was not recognized in 1845.

The distinction between gradual, natural changes and artificial changes in a waterline is a settled one in the law. Where a waterline is a boundary, the boundary follows the waterline through all its gradual, natural changes (*Jefferis* v. *East Omaha Land Co.*, 134 U.S. 178, 189; *Banks* v. *Ogden*, 2 Wall. 57, 67; *Jones* v. *Johnston*, 18 How. 150; *New Orleans* v. *United States*, 10 Pet. 662, 717), but artificial changes in the waterline are held to create a new waterline which the old boundary does not follow (*Marine Ry. Co.* v. *United States*, 257 U.S. 47; *United States* v. *Mission Rock Co.*, 189 U.S. 391). This is equally so where sovereign rather than proprietary boundaries are involved. *Arkansas* v. *Tennessee*, 246 U.S. 158, 173; *Nebraska* v. *Iowa*, 143 U.S. 359, 361.

This principle has not been impaired by the modern rule which measures the limits of territorial waters from artificial coastal structures. Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1609, provides:

> For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour sys-

tem shall be regarded as forming part of the coast.

In *United States* v. *California,* 381 U.S. 139, 176–177, this Court held that it would follow Article 8 in delimiting the standard three-mile grant allowed to all coastal States under the Submerged Lands Act. This ruling is not inconsistent with the position that we are urging here. Under Article 8, a nation may establish a new boundary using artificial coastal structures as part of the base line, and under the *California* case the States enjoy a similar privilege. Nothing in Article 8 or in the *California* decision suggests, however, that artificial changes in the coast line will move an existing boundary to a new location. The three-mile grant is not keyed to the State's boundary as of any particular date, but the grant to Texas is keyed to its 1845 boundary. Article 8 did not purport to expand that boundary, which, under settled principles, has not been shifted by the subsequently built artificial coastal structures.

The rule of the Convention is inapplicable here for another and independent reason: it was not recognized in 1845. Clearly, changes in legal concepts and principles since 1845 can play no part in determining Texas' boundary "as it existed at the time such State became a member of the Union." Otherwise, the notion of a historic boundary would obviously be meaningless.[10] In *United States* v. *California,*

[10] The principle is conveniently illustrated by reference to the rule applicable to the closing line of bays. It is clear that, with historic exceptions, bays more than six miles wide at the entrance were not recognized by international law in 1845 as inland waters; the concept of 24-mile bays was a complete in-

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381 U.S. 139, 166–167, this Court held that, even as to the general three-mile grant made to all States, the scope of the grant would not be affected by any future changes in legal principles. A line determined by the application of new legal principles would not be the same line described in the statutory grant. Likewise, a line derived by application of legal principles which arose after 1845 would not be the boundary "as it existed" then. Accordingly, even if there had been jetties and artificial harbor works on the coast of Texas in 1845, Texas could not prevail without showing that the principle of using such structures as part of the boundary base line was embedded in the boundary act which established its 1845 boundary. We now show that no such principle existed at the time, or, indeed, until very recently.

Texas' historic claim rests on the Republic of Texas Boundary Act of December 19, 1836 (App. A, *infra*, p. 27), which described the boundary of the Republic as "beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande * * *." See *United States* v. *Louisiana*, 363 U.S. 1, 36–65. On its face, the statute does not establish a boundary three leagues from jetties or other artificial structures. Such structures are not "land," and would not

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novation when adopted by the Convention on the Territorial Sea and Contiguous Zone in 1958. Obviously, then, it could not be said that the boundary of Texas "existed" in 1845 at a distance of three leagues outside 24-mile bays. (The example is purely hypothetical; Texas has no such bays.)

ordinarily be thought included in that term.[11] Nor had the Republic of Texas established a policy of construing its statute to require or permit the three-league limit to be measured from artificial structures. There were no jetties or other artificial structures extending outward from its Gulf coast until long after its admission to the Union (Statement, *supra*, pp. 5–6, n. 4).

Even in the absence of any specific language in the Texas statute or any actual Texas practice, it might be argued that if, in 1845, there was an established international practice of using artificial structures as part of the base line for determining the width of a coastal nation's territorial sea, Texas' statute should be construed in the light of that practice. However, the argument is academic, because there was no such international practice at that time; the rule is one of much more recent origin.

There is no doubt that Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, drafted in 1958 and entered into force as to the United States and other signatory powers on September 10, 1964, represents the present international consensus; but when we try to trace its antecedents, the trail becomes very vague before 1926 and even its faintest foreshadowings do not antedate 1876. (This is not surprising, since the concept of a terri-

[11] When the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1608, adopted (Article 3) the general rule that the baseline of the territorial sea is "the low-water line along the coast," it was thought necessary to add the specific provision that "[f]or the purpose of delimiting the territorial sea, the outermost permanent harbour works

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torial sea of a fixed width measured from the coast was not crystallized until the nineteenth century, *United States* v. *California,* 332 U.S. 19, 31–33; and the minor detail of admeasurement technique that we are concerned with here could scarcely have been a matter of concern at a time when there were few, if any, engineering works of significant size extending seaward from the open coast.) The reader will find in Appendix B, *infra,* pp. 29–41, a detailed analysis of the history and provenance of the principle embodied in Article 8. Our conclusion is that the principle was first recognized in 1930 and that it clearly does not date back to the admission of Texas to the Union.

Proceeding from the undisputed fact that when Texas was admitted to the Union in 1845 there were no jetties or harbor works on Texas' Gulf coast,[12] we rest our case on the following two propositions—either of which sustains it.

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which form an integral part of the harbour system shall be regarded as forming part of the coast." Art. 8, 15 U.S.T. (Pt. 2) 1609. Thus, even as recently as 1958, when the Convention was drafted, the usage was not so well established as to be taken for granted or read into the general language by implication.

[12] Texas has alleged that

> the coast line of Texas, from which its seaward boundary was measured, included artificial harbor works and other artificial works or structures which marked the seaward limits opposite its harbors, including Galveston Harbor and Sabine Pass, at the present time.

Reply of the State of Texas, par. II, p. 3 (App. C, *infra,* p. 58). In view of the final phrase, we do not regard this as intended to controvert our allegation that there were no artificial structures on the Texas coast in 1845.

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(1) Congress intended to give the Gulf States the submerged areas that were within their boundaries when they were admitted to the Union, and no more; in the case of Texas that means three leagues from its coast line as it was in 1845.

(2) If Congress in the Submerged Lands Act meant to go further and ratify or confirm the historic boundary of Texas, thus granting it all that boundary now encloses, Texas still cannot prevail because, under settled doctrine, the location of that boundary could not be altered by supervening nonnatural changes in the coast line. Nor can Texas derive any comfort from the current rule of international law that artificial coastal structures are part of the base line for boundary purposes. That rule postdates by many years the admission of Texas to the Union, and so clearly did not inform Texas' historic boundary. In any event, a proper analysis of the rule, in the light of existing legal concepts and principles, is that it authorizes a new boundary when there are artificial changes in the coast line, not that it moves the existing boundary without destroying its legal identity, as gradual, natural changes would do.

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CONCLUSION

The Court should enter a supplemental decree declaring that artificial structures are not to be considered part of the coast line for purposes of demarcating the three-league line dividing the submerged lands of the United States from the submerged lands of the State of Texas under the decree of December 12, 1960; that the United States is entitled to the submerged lands, minerals and other natural resources underlying the Gulf of Mexico seaward of such line as established without reference to artificial structures; and that the State of Texas has no title thereto or interest therein.

Respectfully submitted.

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APPENDIX A

STATUTES INVOLVED

1. *Submerged Lands Act, May 22, 1953, 67 Stat. 29:*

Sec. 2 [43 U.S.C. 1301]. When used in this Act—

(a) The term "lands beneath navigable waters" means—

* * * * *

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles * * *;

* * * * *

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the

coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters;

* * * * *

Sec. 3 [43 U.S.C. 1311]. Rights of the States.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b)(1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; * * *

* * * * *

Sec. 4 [43 U.S.C. 1312]. Seaward Boundaries.—

The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the in-

ternational boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

2. *Republic of Texas boundary act, December 19, 36, 1 Laws of the Republic of Texas, p. 133:*

AN ACT

To define the boundaries of the Republic of Texas.

SEC. 1. *Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled,* That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning: and that the president be, and is hereby authorized and required to open a negotiation with the government of the United

States of America, so soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty.

APPENDIX B

The Background and Origins of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone

In this Appendix, we trace the antecedents of the principle—embodied in Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. (Pt. 2) 1609, drafted in 1958—that artificial structures may be used as part of the base line for determining the limits of a nation's territorial waters.

The Convention was based on a draft developed by the International Law Commission between 1952 and 1956. The commentary by the special *rapporteur* for the Commission noted only that his draft of Article 8 was identical to the corresponding article drafted by the Second Committee of the League of Nations Conference for the Codification of International Law, held at The Hague in 1930. 2 *Yearbook I.L.C.* (1952), p. 35; 2 *Yearbook I.L.C.* (1953), p. 68; 2 *Yearbook I.L.C.* (1954), p. 5. In 1954, the Commission itself considered the article for the first time, 1 *Yearbook I.L.C* (1954), pp. 88–91, making only minor changes in the text; its commentary stated, "This article is consistent with the positive law now in force." 2 *Yearbook I.L.C.* (1954), p. 155. This cautious language, coupled with the fact that the *rapporteur* had referred only to the 1930 draft, not to existing law, suggests that there was no existing rule which the article violated rather than that it embodied an existing rule.

In the very brief debate on the article in the First Committee of the Conference on the Law of the Sea, the Venezuelan delegate stated that (*United Nations*

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Conference on the Law of the Sea, Official Records, Volume III: First Committee (Territorial Sea and Contiguous Zone) (U.N. Doc. No. A/CONF.13/39), p. 142):

> The construction of harbour works being of vital importance not only to the coastal State but also to the ships of all nations, no doubt should be allowed to subsist regarding the status of such works. Governments which had made heavy economic sacrifices to secure their port facilities against the elements had always acted on the assumption that the legal position was precisely as stated in the Commission's text. * * *

And the expert to the secretariat of the conference stated that (*ibid.*):

> * * * the Commission had deliberately drawn the provision in mandatory terms in order to eliminate every shadow of doubt. States had long regarded harbour works such as jetties as part of their land territory and that practice should be universally recognized as unchallengeable. * * *

These passages (the only ones that appear relevant to this question) indicate that, while some nations had for some time held the view reflected in Article 8, there was an absence of recognized law on the subject. This makes it highly relevant to consider the circumstances surrounding the formulation of the 1930 draft, from which Article 8 was directly derived.

In 1924 the Assembly of the League of Nations provided for the appointment of a Committee of Experts to study and report on the progressive codification of international law. The documents submitted by the Committee of Experts (reprinted in 20 *American Journal of International Law* (Special Supplement, July 1926)) include a report and draft convention on territorial waters (pp. 62–147). Article 2 of the convention provided (p. 141): "The zone of the coastal sea shall extend for three marine miles (60 to the

degree of latitude) from low-water mark along the whole of the coast. * * *" On the subject of baseline, the report said only (p. 79): "The general practice of the States, all projects of codification and the prevailing doctrine agree in considering that this line should be low-water mark along the whole of the coast." There was no discussion as to whether artificial structures were part of the baseline.

Thereafter, the League of Nations provided for a Conference for the Codification of International Law, to be held at The Hague in 1930. In anticipation of that conference, the Harvard Law School conducted studies by a group of distinguished scholars, resulting in a series of draft conventions and accompanying commentaries, published in 1929. *Research in International Law*, 23 *American Journal of International Law* (Special Supp. 1929). Article 2 of the draft convention on the law of Territorial Waters provided (p. 250):

> The marginal sea of a state is that part of the sea within three miles (60 to the degree of longitude at the equator) of its shore measured outward from the mean low water mark or from the seaward limit of a bay or rivermouth.

The accompanying commentary stated (p. 252; emphasis added):

> The base line from which the marginal sea is measured may be somewhat changed by a filling of the shallows along the coast. It seems impracticable to lay down any special rule which would apply to extensions of the coast line by constructions jutting from the land. The general rule of the text that the measurement of the marginal sea is to be made from the low water mark should be applicable. A littoral state ought to take account of the needs of general navigation in making any artificial extensions of its coast line; *but the problem is*

not so important as to be covered in the convention.

This appraisal of the situation in 1930 is borne out by the replies of the various nations to questions circulated to them by the Preparatory Committee for the Conference. One of the questions was "how the base line for measuring the breadth of territorial waters is to be fixed in front of ports." League of Nations Document No. C. 74. M.39.1929. V, *League of Nations Conference for the Codification of International Law: Bases of Discussion: Vol. II—Territorial Waters,* p. 45.

The answer of the United States was that (p. 46):

> There does not seem to have been any occasion on the part of the United States to differentiate between the shore-line in front of ports and other sections of the shore.

France made a similar response (*ibid.*), Italy recommended "a line to be fixed" (*ibid.*), and Denmark, Germany, Belgium, Finland and Sweden referred simply to the seaward limits of ports, without specific mention of artificial structures (pp. 45–47). Poland said that the line of the breakwaters of artificial ports "might be" regarded as the baseline (p. 47); Australia, The Netherlands, and Roumania said that the line "should" be based on the outer harbor works (pp. 46, 47); Japan said the baseline "is" the low-water mark at "special port equipment (such as breakwaters, wharves, etc.)" (p. 46); and South Africa, Great Britain, India and New Zealand said that in front of ports the baseline "passes across" between the outermost harbor works (pp. 45, 46). Thus, only Japan and four Commonwealth governments used the present tense in relating the baseline to harbor works; others referred to their use as something that "should" or "might" be done, or did not mention them at all.

From these responses, the preparatory committee formulated its Basis of Discussion No. 10 (p. 47): "In front of ports, territorial waters are measured from a line drawn between the outermost permanent harbour works." That was preceded by the committee's observation (*ibid.*) that "Agreement exists in favor of measuring the breadth of the territorial waters from a line drawn between the outermost permanent harbour works." That was probably a fair inference, though it was more specific than many of the replies actually justified. However, neither the replies nor the observation indicated that the practice had theretofore been widely followed, recognized or even considered.

Basis of Discussion No. 10 was never considered by the Second Committee (the committee on territorial waters) as a whole at the 1930 conference. And disagreement as to the proper width of the territorial sea so basically affected the attitudes of many participants toward other subjects under consideration, particularly those before the Second Subcommittee, that the committee found itself unable to present any draft convention to the conference. League of Nations Document No. C.351(b).M.145(b).1930.V, *Acts of the Conference for the Codification of International Law: Meetings of the Committees; Vol. III—Minutes of the Second Committee: Territorial Waters,* p. 211. However, it did submit with its report, for information,

tentative drafts drawn up by its subcommittees. One draft included the following (p. 219):

PORTS

> In determining the breadth of the territorial sea in front of ports, the outermost permanent harbour works shall be regarded as forming part of the coast.
>
> *Observations.*
>
> The waters of the port as far as a line drawn between the outermost fixed works thus constitute the inland waters of the coastal State.

Several countries had submitted comments or proposals regarding various bases of discussion, *Acts of Conference,* pp. 182–201, but only one had concerned Basis of Discussion No. 10. That was a bare proposal by the United States, unaccompanied by any explanation, suggesting that the Basis of Discussion be reworded to read: "In front of ports, the outermost permanent harbour works shall be regarded as a part of the coast in determining the extent of the territorial waters." (p. 200.) No other reference to this article appears.

It seems, then, that in 1930, when the principle of measuring the width of the territorial sea from the coast was well established and coastal engineering works of significant size were in existence, no objection was voiced to a proposal to treat such permanent harbor works as part of the baseline. Prior to this conference and the exchanges preceding it, however, we find no specific discussion of the subject at all. The only references that we have found to such artificial structures before 1926 are in a group of English cases that did not concern their use as part of the base line. The principal significance of those cases here is that their complete silence on the subject, in a context

where it would seem to have some relevancy, strongly suggests that the matter had never been thought of when they were decided.

The first of these cases was *The Queen* v. *Keyn*, L.R. 2 Exch. Div. 63 (1876). That was a prosecution for manslaughter against a German shipmaster whose ship collided with a British vessel, within 1.9 miles of Dover pierhead and 2.5 miles of Dover beach (p. 65)[1] causing the death of a passenger on the British ship. His conviction in the Central Criminal Court was quashed by the Court for Crown Cases Reserved, on the ground that the former jurisdiction of the Admiral, to which the Central Criminal Court had succeeded, had never extended to offenses against English law committed by foreigners on foreign vessels outside inland waters. The decision was by a majority of seven to six, ten justices writing opinions, of which that of Cockburn, C.J. (pp. 161–238), appears in general to represent the views of the majority. His opinion included the following (pp. 198–199):

> It does not appear to me that the argument for the prosecution is advanced by reference to encroachments on the sea, in the way of harbours, piers, breakwaters, and the like, even when projected into the open sea, or of forts erected in it, as is the case in the Solent. Where the sea, or the bed on which it rests, can be physically occupied permanently, it may be made subject to occupation in the same manner as unoccupied territory. In point of fact, such encroachments are generally made for the benefit of the navigation; and are therefore readily acquiesced in. Or they are for the purposes of defense, and come within the principle that a nation may do what is necessary for the pro-

[1] The very fact that the court thought it worth while to mention both distances shows that it did not feel the distance from the pier would necessarily be the significant one.

> tection of its own territory. Whether, if an encroachment on the sea were such as to obstruct the navigation to the ships of other nations, it would not amount to a just cause of complaint, as inconsistent with international rights, might, if the case arose, be deserving of serious consideration. That such encroachments are occasionally made seems to me to fall very far short of establishing such an exclusive property in the littoral sea as that, in the absence of legislation, it can be treated, to all intents and purposes, as part of the realm.

It appears from this passage that the building of structures extending out from the shore was thought of only as something done *within* the territorial sea, and was urged upon the court as demonstrating that national sovereignty extended over the territorial sea. There seems to have been no suggestion that it would operate to *extend* the territorial sea. It is very natural that the matter was viewed only in that light, for at that time the very existence of a territorial sea was much debated. The court recognized the recent development of the concept of a three-mile belt of "territorial waters" over which British sovereignty extended, but concluded that, except for the traditional jurisdiction of the Admiral over British vessels on the seas, British laws were not applicable to the three-mile belt until specifically made so by Parliament. (Pp. 194–198.)[2]

In that connection, the Chief Justice's discussion is particularly useful because of the light it sheds on the meaning of the phrase, "the realm of England," used in later cases discussed below. In his view, the "realm of England" comprised the area where the common law applied, and did not extend beyond the

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[2] That was subsequently done by the Territorial Waters Jurisdiction Act, 41 & 42 Vict. c. 73.

limits of the counties, that is, beyond the low-water line and the inland waters. He said (pp. 197–198):

> To come back to the subject of the realm, I cannot help thinking that some confusion arises from the term "realm" being used in more than one sense. Sometimes it is used, as in the statute of Richard II, to mean the land of England, and the internal sea within it, sometimes as meaning whatever the sovereignty of the Crown of England extended, or was supposed to extend, over.
>
> When it is used as synonymous with territory, I take the true meaning of the term "realm of England" to be the territory to and over which the Common law of England extends—in other words, all that is within the body of any county—to the exclusion of the high seas, which come under a different jurisdiction only because they are not within any of those territorial divisions, into which, among other things for the administration of the law, the kingdom is parcelled out. * * * For centuries our judicial system in the administration of the criminal law has been divided into two distinct and independent branches, the one having jurisdiction over the land and any sea considered to be within the land; the other over the sea external to the land. * * *

Only one other reference was made to artificial structures. Justice Bramwell, while concurring in the majority view that the court lacked jurisdiction, rejected as unpersuasive one argument advanced by the defendant in support of that view. That argument was that a contrary holding would necessarily lead to the conclusion that British law governed purely shipboard transactions on foreign vessels within the three-mile belt and that a child born on such a vessel would be a British subject—results which were said to be un-

thinkable. In rejecting this argument, Justice Bramwell said (p. 149):

> It may or may not be so. But the same consequence would follow if the foreign ship were in a British port. * * * But I can see no great difference between a ship sailing inside or outside Plymouth Breakwater.

That remark seems to imply a recognition that waters inside the breakwater were inland waters, but sheds no light at all on the further question whether the breakwater would affect the delimitation of the territorial sea.

In the following year, *Blackpool Pier Company* v. *Assessment Committee of Fylde Union,* 41 J.P. 344 (M.C. 1877), was decided.[3] The question there was whether a pier extending beyond the low-water mark was taxable by a parish under Section 27 of 31 & 32 Vict., c. 122, which authorized a parish to tax "every accretion from the sea, whether natural or artificial, and the part of the sea shore to the low water-mark." The pier had been constructed on land granted by the Duchy of Lancaster as far as the low-water mark and by the Crown beyond the low-water mark. The court held that the pier, a wooden structure supported on iron pillars, was not taxable as an "accretion from the sea" to the extent that it was beyond the low-water mark. Chief Justice Coleridge said of that portion of the pier that it is "beyond the realm of England" (41 J.P. at 345) and that (*ibid.*):

> The pier is carried out to sea over the space between high and low water-mark, and for about 500 feet beyond low water-mark, and therefore beyond the realm of England * * *. The enactment was intended to deal with a natural

[3] Also reported, with minor verbal variations, at 46 L.J. (n.s.) pt. 3 (M.C.) 189.

> accretion from the sea, or an artificial embankment. It is said that if this pier had been a solid structure instead of being supported by iron pillars it would have been within the term "accretion." I think not, for a building thrown from the land into the sea cannot be said to be an accretion from the sea, but it is unnecessary to determine that, as this pier is not a structure of that kind. On that ground alone the respondents would fail * * *.

The concurring opinion by Justice Grove seems to attach more weight to the distinction between solid and overwater structures, on the basis that the latter did not affect the low-water line, which he took to be the statutory limit of jurisdiction to tax. 41 J.P. at 345. Whatever the statute may have meant in that regard, the mere fact that such uncertainty existed demonstrates that there was not at that time any settled view that a solid structure jutting out into the sea would extend the "realm of England" as that term was used by Chief Justice Coleridge and had been used by Chief Justice Cockburn in *The Queen* v. *Keyn*.

The subject seems not to have recurred until the case of *Barwick* v. *South Eastern & Chatham Railway Companies*, [1920] 2 K.B. 387, involving the application of the same statute to an area of eleven acres which the Dover Harbor Board, as authorized by statute, had reclaimed below the low-water line in Dover harbor, to lease to railroads as a station site. Justice Darling held the area to be taxable, distinguishing the *Blackpool Pier* case on the ground that the fill affected the low-water line, whereas the pier had not. He said (p. 394):

> I am of opinion that this piece of reclaimed land which was part of the bed of the sea has, by the exclusion of the sea from it, become part of the realm of England * * *.

That judgment was affirmed on appeal, [1921] 1 K.B. 187 (C.A.). The seriatim opinions of Lord Reading, C.J., and Bankes, L.J., both referred to the land in issue as having been "the bed of the sea" and "reclaimed from the sea" by having been filled in. Pp. 195, 197. Neither referred to the effect of piers; but Scrutton, L.J., also in favor of affirmance, said (p. 201):

> I think it is clear that this area of eleven acres is such an "artificial accretion." Indeed the only reason suggested to us for holding the contrary was the decision in the *Blackpool Pier Case* * * * that a wooden decked pier resting on iron pillars was not an accretion from the sea. I think no one would ever speak of such an erection as land. Whether a stone jetty was such an accretion would depend on the particular facts, but when a plot of land so large as eleven acres with a large station upon it results from the reclamation, the case is clearly within the statute. In my opinion by virtue of this Act, this particular plot of eleven acres is within the parish of Dover.

In evaluating this case, it is important to note the actual situation of the land involved. According to the statements of facts in both courts, it was "certain land eleven or twelve acres in extent immediately adjoining the east side of the existing Admiralty Pier." [1920] 2 K.B. 387; [1921] 1 K.B. 187. From the discussion and map of Dover harbor in 11 Encyclopedia Britannica (1948) 177, "Harbours," it appears that the harbor is a wholly artificial enclosure, enclosed on the west by the Admiralty Pier, begun in 1844 and subsequently extended, and on the east and south by other breakwaters built between 1897 and 1909. Thus, the land in issue, immediately adjoining

the east side of the Admiralty Pier, was within the artificial enclosure of the harbor. It is evident that Justice Darling did not feel, even as late as 1920, that construction of the harbor works had brought the enclosed area within the "realm of England"; otherwise, he would not have said that the subsequent filling of the land in the harbor had done so. Justice Scrutton's remarks reflect a conscious uncertainty as to the status even of a solid jetty itself. While there might not necessarily be an exact identity between this subject and the use of harbor works as part of the baseline of the territorial sea, there is at least a sufficiently close relationship so that discussion of the latter point would seem to have been called for if there had been a recognized rule regarding it.

APPENDIX C

PRIOR PROCEEDINGS IN THIS COURT[1]

In the Supreme Court of the United States

October Term, 1966

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA ET AL.

MOTION FOR INJUNCTIVE RELIEF AND SUPPLEMENTAL DECREE AS TO THE STATE OF TEXAS

The United States of America, by the Solicitor General, moves the Court—

1. For entry of a supplemental decree as to the State of Texas, declaring—

a. That the "coast line" of Texas as referred to in paragraphs 1 and 2 of the decree entered herein on December 12, 1960, 364 U.S. 502, means the coast line of Texas as it existed and was defined when Texas became a member of the Union on December 29, 1845;

b. That on December 29, 1845, the coast line of Texas did not include artificial harbor works or other artificial works or structures, and particularly did not include jetties extending seaward from the natural

[1] Omitting the memorandum of the United States in support of its motion, which is superseded by this brief.

headlands at the entrances to the Sabine Pass or Galveston Harbor;

c. That on December 29, 1845, the inland waters on the coast of Texas did not include waters enclosed only by artificial harbor works or other artificial works or structures, and the coast line of Texas did not include the line marking the seaward limit of such waters; and

d. That under the decree entered herein on December 12, 1960, the United States was and is entitled, as against the State of Texas, to all the lands, minerals and other natural resources underlying the Gulf of Mexico, more than three leagues from the coast of Texas as it existed and was defined on December 29, 1845, and the State of Texas was not and is not entitled to any interest in such lands, minerals or resources, and the State of Texas, its privies, assigns, lessees and other persons claiming under it were and are enjoined from interfering with the rights of the United States in such lands, minerals and resources;

2. For entry forthwith of an order requiring the State of Texas to show cause why a preliminary injunction should not be issued, restraining it from issuing any lease affecting or purporting to affect any of the lands or resources above described, or from otherwise interfering with said lands or resources, pending the ruling of the Court on the foregoing request for entry of a supplemental decree; and

3. For entry of a temporary restraining order, enjoining the State of Texas from issuing any lease affecting or purporting to affect any of the lands and resources above described, or from otherwise interfering with any of such lands or resources, before the return of the State of Texas to said order to show cause and the ruling of the Court thereon;

4. For such other and further relief as the Court may deem proper.

This motion is made on the following grounds:

1. The State of Texas has no right to submerged lands of the Gulf of Mexico seaward of the coast line, except as such right has been given to it by the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315.

2. The Submerged Lands Act gives the State of Texas no right to submerged lands more than three geographical miles from the coast line, except to the extent of its boundaries (not exceeding a distance of three leagues from the coast line) "as they existed at the time such State became a member of the Union."

3. By its opinion of May 31, 1960, 363 U.S. 1, and its decree of December 12, 1960, 364 U.S. 502, the Court determined that the outer limit of the lands granted to Texas by the Submerged Lands Act was at the boundary of Texas when it became a member of the Union, which was three leagues from the "coast line," defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters," but it did not identify the components of the "coast" or the "inland waters" as there referred to, and reserved jurisdiction to entertain such further proceedings, enter such orders and issue such writs as might from time to time be deemed necessary or advisable to give proper force and effect to that decree.

4. When Texas became a member of the Union on December 29, 1845, the coast line of Texas from which its seaward boundary was measured did not include artificial harbor works or other artificial works or structures, or a line marking the seaward limit of waters enclosed by such works or structures, and particularly it did not include jetties extending seaward

from the naturel headlands at the Sabine Pass or Galveston Harbor.

5. On October 25, 1966, the Solicitor General advised the Attorney General of Texas of the claim of the United States in this respect. Nevertheless, on February 28, 1967, the Commissioner of the General Land Office of the State of Texas notified the Director of the Bureau of Land Management, Department of the Interior, that Texas is offering for mineral leasing on April 4, 1967, certain submerged lands of the Gulf of Mexico, including land extending seaward to a distance of three leagues from the outer ends of the jetties that extend seaward from the natural headlands at the entrances to the Sabine Pass and Galveston Harbor.

6. The lands referred to in paragraph 5, *supra,* extend seaward more than three leagues from the coast line of Texas as it existed when Texas became a member of the Union and, in part, more than three leagues from the coast line of the United States as recognized and asserted by the United Sates for international purposes, and consequently are not included in the lands given to Texas by the Submerged Lands Act, as determined by paragraph 2 of the decree of December 12, 1960, herein.

7. Said lands are included in the lands described by paragraph 1 of the decree of December 12, 1960, herein, which paragraph held that as against the State of Texas the United States is entitled to said lands and the minerals and other natural resources therein and that the State of Texas is not entitled thereto, and enjoined the State of Texas, its privies, assigns, lessees and other persons claiming under it from interfering with the rights of the United States in such lands, minerals and resources.

8. The action of the State of Texas in unilaterally

offering these submerged lands for mineral leasing, without invoking the reserved jurisdiction of this Court to determine with greater particularity the scope or effect of its decree of December 12, 1960, despite the known claim of the United States that paragraph 1 of that decree awarded these lands to the United States and enjoined the State of Texas from interfering there with, is disruptive of orderly procedure and will interfere with orderly and advantageous development of the mineral resources of the Gulf of Mexico and will cause damage to the United States that is difficult or impossible to evaluate and for which the United States has no adequate remedy at law.

[S] Thurgood Marshall
THURGOOD MARSHALL,
Solicitor General.

MARCH 1967.

In the Supreme Court of the United States

October Term, 1966

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

AFFIDAVIT OF GEORGE S. SWARTH

CITY OF WASHINGTON,
District of Columbia, ss:

GEORGE S. SWARTH, Being first duly sworn, deposes and says:

1. On October 25, 1966, Solicitor General Thurgood Marshall wrote a letter to Waggoner Carr, Attorney General of Texas, protesting against the proposed sale

by Texas on November 1, 1966, of mineral leases on certain submerged lands within three leagues from the jetties at Galveston Harbor but more than three leagues from the natural coast line. In that letter, the Solicitor General said:

> As we understand the Submerged Lands Act, as construed by the Supreme Court, it entitles Texas to the submerged lands within its "historic boundary." Texas's historic boundary was a boundary three leagues from the "land." So far as we are aware, the use of artificial structures as part of the coast line from which to measure the width of the marginal belt was not a recognized principle of international law when Texas entered the Union. To the extent that Texas relies on the historic three league width of its marginal belt, we believe that this width should be measured from the historic coast line, that is to say the natural coast line. We do not mean to exclude consideration of susequent natural accretion, which changes the position of the coast line but not its legal identity; but we do not feel that Texas is entitled to combine the present international coast line with the historic three league width of its territorial sea, so as to achieve a boundary more extended than either the historic boundary of Texas or the present international boundary of the United States.

2. On November 21, 1966, the Solicitor General received a letter dated November 18, 1966, signed by J. Arthur Sandlin, Assistant Attorney General of Texas, which acknowledged receipt of the foregoing letter, reported that the tracts in question had not been leased because no satisfactory bids had been received, and made reference to certain positions taken elsewhere by the United States which it suggested were inconsistent with the position stated in the Solicitor General's letter of October 25, 1966.

3. On December 7, 1966, the Solicitor General replied to Mr. Sandlin, distinguishing the situations referred to by him, reaffirming the position stated in the letter of October 25, 1966, and expressing the hope that the parties would be able to come to an understanding on the subject.

4. On February 21, 1967, Jerry Sadler, Commissioner of the General Land Office of the State of Texas, issued a Notice for Bids for sale of oil and gas leases, including therein tracts identified by "Marginal Numbers," and by Tract Numbers as shown on official leasing maps of the State of Texas, as follows:

328. Tract 144–L All the NE/4 & NW/4 Northwest of the 3-Marine League Line 2815 ± Acres

329. Tract 144–L All the SE/4 & SW/4 Northwest of the 3-Marine League Line 2270 ± Acres

331. Tract 151–L NE/4 1440 Acres

333. Tract 151–L SE/4 1440 Acres

334. Tract 151–L SW/4 1440 Acres

335. Tract 152–L All of Tract 152–L Northwith of the 3-Marine League Line 2240 ± Acres

336. Tract 181–L All of Tract 181–L Northwest of the 3-Marine League Line 2345 ± Acres

337. Tract 182–L NE/4 1440 Acres

357. Tract 17–L All the SW/4 North of the 3-Marine League Line and West of a line having a bearing of S 11°30′00″ E (True), said line passing through a point having a Lambert Coordinate Value of X=3,638,911.17 and Y=710,343.69 935 ± Acres

5. On February 28, 1967, Jerry Sadler wrote to Charles H. Stoddard, Director of the Bureau of Land Management, Department of the Interior, as follows:

In offering state-owned land for oil and gas lease in the Gulf of Mexico, it is necessary to establish the 3-marine league line and plat it on Land Office maps to enable us to calculate acreage and lease those lands belonging to the State of Texas out to such line. I have concluded, in view of the case law and other facts and information, that the State of Texas is justified in beginning the measurement of the 3-marine league line from the Gulfward end of man-made harbor structures, being jetties off the Coast of Texas.

Our next lease sale is scheduled to be held April 4 of this year, and the tracts offered for lease in this sale will reflect the calculated acreage based on the establishment of the 3-marine league line as set out above.

6. From an inspection of official leasing maps, it appears that approximately the following percentages of the several tracts listed in paragraph 4, *supra,* are more than three leagues from the natural coast line, excluding jetties:

328.	78.0%
329.	79.0%
331.	30.4%
333.	83.7%
334.	10.5%
335.	100.0%
336.	79.6%
337.	15.5%
357.	100.0%

7. From an inspection of official leasing maps, it appears that approximately 94 percent of the parcel bearing marginal number 357, listed in paragraph 4, *supra,* is more than three leagues from that part of the Sabine Pass jetties that is within one geographical mile of the natural shore line.

8. Following is a list of surveys of the gulf coast of Texas made by the United States Coast and

Geodetic Survey (formerly the United States Coast Survey), each of which according to the records of that agency is the earliest survey made by it of the area covered:

No. 453. Map of the Country Adjacent to the Rio Bravo del Norte. 1854.

1045. Eastern Shore Laguna Madre from Brazos Santiago Entrance Northward. 1867.

1476a. Laguna Madre, Texas, from Triangulation Station Singer to Latitude 26°20′. 1879–80.

1476b. Laguna Madre, Texas, from Latitude 26°20′ to 26°27′. 1879–80.

1477a. Laguna Madre, Texas, from Latitude 26°27′ to 26°35′. 1879–80.

1477b. Shores of Laguna Madre, Texas, from Triangulation Station Lomalto to Triangulation Station Rainy. 1879–80.

1676. Laguna Madre from Rainy Triangulation Station to Mosquito Triangulation Station. 1879 & 1881.

1677. Part of Laguna Madre from Mosquito Triangulation Station to Sand Triangulation Station, Texas. 1879 & 1881.

1678. Laguna Madre from Lone Palmetto Triangulation Station to Gum Pen Triangulation Station. 1881.

1679. Laguna Madre from Gum Pen Triangulation Station to Griffins Pt. Triangulation Station. 1881.

1627. Shores of Laguna Madre, Texas, from Triangulation Station Griffins to Triangulation Station Camp No. 2. 1881 '82.

1628. Shores of Laguna Madre, Texas, from Triangulation Station Camp No. 2 to Triangulation Station Peat Id. 1881–'82.

1626. Shores of Laguna Madre, Texas, from Triangulation Station Peat Id. to Crane Islands. 1881–'82.
1044. Corpus Christi Bay, Texas. 1867.
823. From Aransas Pass Eastward, Texas. 1860–61–66.
787. 2nd Chain to Long Reef, Texas. 1860.
766. Part of Espiritu Santo and San Antonio Bays and Vicinity, Texas. 1859.
644. East End of Matagorda Isd. and the Shore of the SW End of Matagorda Bay. 1857.
643. Part of Matagorda Peninsula. 1856.
642. A Part of Matagorda Peninsula and the Mainland Opposite. 1855–1857.
557. Part of Matagorda Bay & Peninsula, Texas. 1856.
412. Coast of Texas Between Brazos River and Matagorda Bay. 1853.
375. Texas Coast from San Luis to Jupiter. 1852.
374. Galveston West Bay - Galveston Island and Chocolate Bay. 1852.
328. Galveston West Bay. 1851.
329. Galveston East Bay & Bolivar Peninsula. 1851.
282. Galveston Harbor. 1850.
1636. Coast of Texas from Vicinity of Bolivar Point to Rollover Station. 1886.
1634. Coast of Texas from Head of East Bay (Galveston Harbor) to Sabine Pass (Sheet No. 1). 1882.
1633. Coast of Texas from Head of East Bay (Galveston Harbor) to Sabine Pass (Sheet No. 2). 1882.
1635. Coast of Texas from Head of East Bay (Galveston Harbor) to Sabine Pass (Sheet No. 3). 1882.
1356. Sabine Pass, Texas. 1874.

9. The foregoing surveys, on file in the archives of the United States Coast and Geodetic Survey in Washington D.C., depict the entire gulf coast of Texas in large scale (1:20,000) and in great detail. They show no jetties or other artificial structures of any kind extending seaward from any part of the coast of Texas into the Gulf of Mexico.

10. On March 24, 1967, the State of Texas declined to postpone the leasing date with respect to the lands described in paragraph 4, *supra*.

[S] George S. Swarth,
GEORGE S. SWARTH,
Attorney,
Department of Justice,
Washington, D.C.

[SEAL]

Subscribed and sworn to before me this 24th day of March, 1967.

[S] Emily McC. Ireland,
EMILY McC. IRELAND,
Notary Public in and for the
District of Columbia.

My commission expires February 28, 1969.

In the Supreme Court of the United States

October Term, 1966

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA ET AL.

PROPOSED ORDER TO RESPOND TO MOTION, AND TO SHOW CAUSE, AND TEMPORARY RESTRAINING ORDER

On consideration of the motion of the United States for entry of a supplemental decree declaring that the United States is entitled to certain submerged lands of the Gulf of Mexico and enjoining the State of Texas from interfering therewith, and for a temporary restraining order and preliminary injunction to enjoin the State of Texas from leasing or otherwise interfering with said submerged lands pending determination of the title thereto; and

It appearing from said motion and attached affidavit that the State of Texas has announced its intention to offer said lands for mineral leasing on April 4, 1967, and that such leasing may violate this Court's injunction of December 12, 1960, and subject to unlawful exploitation mineral resources to which the United States makes claim under that decree, and tend to promote physical conflict between persons claiming under the State of Texas and representatives of the United States, for all of which damages would not afford the United States an adequate remedy,

It is hereby ordered:

1. That within twenty days from the date hereof the State of Texas respond to the motion of the United States, and show cause why a preliminary injunction should not be issued as prayed for, pend-

ing final determination of the rights of the parties in the premises; and

2. That the State of Texas be, and it is hereby, restrained from leasing or otherwise interfering with the submerged lands described in the motion of the United States, pending the ruling of the Court on the motion of the United States for a preliminary injunction and the response of the State of Texas thereto.

In the Supreme Court of the United States

October Term, 1966

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA ET AL.

PROPOSED SUPPLEMENTAL DECREE

For the purpose of giving effect to the conclusions of this Court as stated in its opinion, announced May 31, 1960, and the decree entered by this Court on December 12, 1960, it is ordered, adjudged and decreed as follows:

1. The coastline of Texas, as referred to in paragraphs 1 and 2 of the decree entered herein on December 12, 1960, 364 U.S. 502, means the coast line as it existed on December 29, 1845, as heretofore or hereafter modified by gradual, natural changes, but excluding artificial harbor works and other artificial works or structures and excluding the line marking the seaward limit of waters enclosed by such works or structures.

2. As against the defendant State of Texas, the United States is entitled to all the lands, minerals and other natural resources underlying the Gulf of Mexico more than three leagues seaward from

the coast line of Texas as above defined. The State of Texas is not entitled to any interest in such lands, minerals or resources, and said State, its privies, assigns, lessees and other persons claiming under it were enjoined by the decree of December 12, 1960, and are hereby enjoined, from interfering with the rights of the United States in such lands, minerals or resources.

3. The decree of December 12, 1960, as hereby amplified and clarified, is continued in effect.

4. Jurisdiction is reserved by this Court to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to the decree of December 12, 1960, or this decree.

FRIDAY, MARCH 24, 1967

SUPREME COURT OF THE UNITED STATES

President: Mr. Chief Justice Warren, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Clark, Mr. Justice Harlan, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, and Mr. Justice Fortas.

ORDERS IN PENDING CASES

No. 9, Original. *United States of America, plaintiff,* v. *State of Louisiana et al.* On consideration of the motion of the United States for entry of a supplemental decree declaring that the United States is entitled to certain submerged lands of the Gulf of Mexico and enjoining the State of Texas from interfering therewith, and for a temporary restraining order and preliminary injunction to enjoin the State of Texas from leasing or otherwise interfering with

said submerged lands pending determination of the title thereto; and

It appearing from said motion and attached affidavit that the State of Texas has announced its intention to offer said lands for mineral leasing on April 4, 1967, and that such leasing may violate this Court's injuncton of December 12, 1960, and subject to unlawful exploitation mineral resources to which the United States makes claim under that decree,

It is hereby ordered:

(1) That within twenty days from the date hereof the State of Texas respond to the motion of the United States, and show cause why a preliminary injunction should not be issued as prayed for, pending final determination of the rights of the parties in the premises; and

(2) That the State of Texas be, and it is hereby, restrained from leasing or otherwise interfering with the submerged lands described in the motion of the United States, pending the ruling of the Court on the Motion of the United States for a preliminary injunction and the response of the State of Texas thereto.

The Chief Justice and Mr. Justice Clark took no part in the consideration or decision of this motion.

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In the Supreme Court of the United States

October Term, 1966

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS, DEFENDANT

REPLY OF THE STATE OF TEXAS IN OPPOSITION TO PLAINTIFF'S REQUEST FOR A SUPPLEMENTAL DECREE AND PRELIMINARY INJUNCTION

Now comes the State of Texas, defendant in the pending Motion for Supplemental Decree and Injunctive Relief, by its Attorney General, and answers as follows:

AS TO THE REQUESTED SUPPLEMENTAL DECREE

Defendant State denies that the baseline from which to measure Texas' three-league boundary and marginal belt of submerged lands granted and restored to the State under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. 1301–1315, is the natural shore line as it existed when Texas became a member of the Union on December 29, 1845, in the controverted areas seaward of permanent harbor works, jetties, and protective works, which existed at such time or which presently exist.

There are presently existing protective jetties which constitute part of the permanent harbor works and mark the seaward limits of inland waters opposite the natural headlands at the entrances of Sabine Pass, Galveston Harbor, and other Texas harbors, and the proper baseline from which to measure Texas' grant under the Submerged Lands Act opposite such harbor works is the outermost seaward limit thereof. These

outermost permanent harbor works, which form an integral part of the harbor system, are regarded as forming part of the coast for the purpose of interpreting the definitions and determining the baseline to be applied in the Submerged Lands Act. Such was the holding of this Court in the case of *United States* v. *California,* 381 U.S. 139 (1965). Therefore, the outermost limit of the harbor works is the correct baseline from which to measure the extent of the three-leagues granted and restored to Texas under the Submerged Lands Act.

Texas denies that the United States is entitled to the Supplemental Decree sought in its pending Motion, and for specific reply to the grounds enumerated by plaintiff in support of the Motion, the State says:

I

Answering the grounds enumerated as 1, 2, and 3, page 3, of the Motion, defendant admits the statements of fact therein contained but denies that the Submerged Lands Act restricts the baseline to the natural shore line in harbor areas, as distinguished from the outermost limits of permanent harbor works forming an integral part of the harbor system as they presently exist.

II

Answering ground 4, defendant denies the allegation therein contained and says that the coast line of Texas, from which its seaward boundary was measured, included artificial harbor works and other artificial works or structures which marked the seaward limits opposite its harbors, including Galveston Harbor and Sabine Pass, at the present time.

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III

Defendant admits the allegations contained in ground 5 of the Motion.

IV

Answering grounds 6 and 7, defendant denies the allegations therein contained and the conclusions that the lands in controversy are not included in the lands granted to Texas by the Submerged Lands Act and that they were included in the lands adjudged to the United States in the decree of December 12, 1960 in the case of *United States* v. *Texas*, 364 U.S. 502 (1960). Defendant alleges, as heretofore stated, that the lands in controversy were included in the grant to Texas contained in the Submerged Lands Act.

AS TO THE REQUESTED PRELIMINARY INJUNCTION

V

Answering ground 8, defendant denies that any proposed action by the State in leasing the lands in controversy would have resulted in any injury or damage to the United States, because the Texas leases on sealed bids require the same royalty as on Federal leases; payment of a minimum bonus of Twenty-five Dollars per acre as compared with a minimum of Fifteen Dollars per acre on Federal leases; payment of a minimum of Five Dollars per acre annual rentals as compared with a minimum of Three Dollars per acre on Federal lease; and that the Attorney General of Texas offered to enter into a written agreement with the Secretary of Interior to hold in trust and suspense any sums paid for such leases, together with rentals and royalties thereon, in so far as the leases covered

any portion of the lands in controversy, pending a determination of the controversy, as was done in the case of California and Louisiana, but the Secretary of Interior declined to do so.

The result is that substantial sums of money for bonuses and annual rentals will be lost to either the State or the United States during the pendency of this case. Upon refusal of the Secretary of Interior to enter into such an agreement, the State withdrew the leases from the proposed sale and will not again offer such leases on any of the controverted area without such an agreement approved by this Court, until this controversy has been settled or determined on the merits in this proceeding. Therefore, there is no need or justification for the granting of the preliminary injunction sought by the United States.

CONCLUSION AND PRAYER

Under the foregoing circumstances, since Texas does not intend to lease any of the controverted area pending determination of this controversy, the Motion for Preliminary Injunction should be denied. In the alternative, if Texas is enjoined despite these representations to the Court, which are the same as the representations made by the Solicitor General that the United States will refrain from leasing in the disputed area pending a determination on the merits, then the injunction should include and apply also to the United States, for which defendant hereby applies by way of cross-action, but only in the event that an injunction is granted against Texas.

Further, the defendant prays that the plaintiff take nothing by its Motion filed herein; that the Motion for a Supplemental Decree be denied after the case has been submitted upon briefs and oral argument;

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and that defendant recover its costs and expenses herein incurred.

[S] CRAWFORD C. MARTIN,
Attorney General of Texas.
GEORGE COWDEN,
First Assistant Attorney General.
A. J. CARRUBI,
Staff Legal Assistant.
HOUGHTON BROWNLEE, JR.,
Assistant Attorney General.
ARTHUR SANDLIN,
Assistant Attorney General.

Of Counsel:
PRICE DANIEL

MONDAY, APRIL 24, 1967

SUPREME COURT OF THE UNITED STATES

Present: Mr. Chief Justice Warren, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Clark, Mr. Justice Harlan, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, and Mr. Justice Fortas.

* * * * *

ORDERS IN PENDING CASES

* * * * *

No. 9, Original. United States of America, plaintiff, *v.* State of Louisiana et al. The motion of the United States for a preliminary injunction against the State of Texas is denied on the representation of the Attorney General of Texas that "Texas does not intend to lease any of the controverted area pending determination of this controversy." The case will be set in due course for oral argument on the issues raised in

the application of the United States for entry of a supplemental decree and the reply of Texas thereto. The plaintiff is given until July 25, 1967, for filing its brief and the defendant is given until September 25, 1967, to file its reply. The Chief Justice and Mr. Justice Clark took no part in the consideration or decision of this motion.

U.S. GOVERNMENT PRINTING OFFICE: 1967